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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 878

R. D. DOUGLAS, JR., PETITIONER

v.

W. WILLARD WIRTZ, Secretary of Labor

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the district court (Pet. App. 21-30) is reported at 232 F. Supp. 348. The opinion of the court of appeals (Pet. App. 32-39) is reported at 353 F. 2d 30.

JURISDICTION

The judgment of the court of appeals was entered on October 8, 1965 (Pet. App. 32). The petition

for a writ of certiorari was filed on January 5, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether Section 203(c) of the Labor-Management Reporting and Disclosure Act of 1959 exempts an attorney who was engaged in activities which must be reported under Section 203(b) from including a statement of receipts and disbursements on account of all other labor relations advice or services in the annual report required by Section 203(b).

STATUTE INVOLVED

Sections 203(b), (c) of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 526, 29 U.S.C. 433(b), (c), provide:

> (b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly—
>
> (1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or
>
> (2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

(c) Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

STATEMENT

Under Section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959, certain reports are required of any person who, by agreement with an employer, undertakes activities the direct or indirect object of which is either (1) to persuade employees as to the manner of exercising their collective bargaining rights or (2) to supply information to an employer concerning employees in connection with a labor dispute. Two types of reports are required by Section 203(b). First, within 30 days after entering into such agreement, a report must be filed with the Secretary of Labor containing "a detailed statement of the terms and conditions of such agreement." Second, for each fiscal year during which payments were made as a result of such an agreement, an annual report must be filed with the Secretary containing a statement of receipts and disbursements "of any kind from employers on account of labor relations advice or services" and designating the source or purpose thereof. Section 203(c) provides that "Nothing in this section shall be construed to require any * * * person to file a report * * * by reason of his giving * * * advice to such employer or representing * * * such employer before any court, administrative agency, or tribunal of arbitration or engaging * * * in collective bargaining on behalf of such employer * * *."

The relevant facts have been stipulated (App. 16-27).[1] On three occasions in 1960 and 1961, peti-

[1] "App." refers to the appendix filed below by the Secretary of Labor, which is a part of the record in this Court.

tioner, pursuant to agreements with three employers, made speeches to employees, an object of which was "to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing."[2] It is agreed that by reason of each of those undertakings petitioner was obliged to file and did file a 30-day report with the Secretary setting forth a statement of the terms and conditions of the agreement. Section 203(b).[3] Petitioner also filed annual reports for 1960 and 1961. However, petitioner's annual reports did not contain information with respect to his labor relations activities other than those on behalf of the three employers to whose employees the three speeches had been made.

Petitioner's other labor relations activities during 1960 and 1961 consisted of rendering labor relations advice to employers, representing or agreeing to represent employers before courts, agencies or arbitration tribunals, or engaging or agreeing to engage in collective bargaining on behalf of employers. (Stipulation 7, App. 17-18). Petitioner has maintained

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[2] Stipulations 4-6 (App. 16-17), state that these speeches were reportable under Section 203(b) of the Act and were not within the exemption of Section 203(c). Because the stipulation obviated the need for proof as to the nature or content of these speeches, no evidence other than petitioner's own characterization of these speeches in his 30-day reports is in the record. Petitioner, although he here questions whether his activities were reportable (Pet. 9), chose to foreclose proof as to that question by his stipulation.

[3] These reports appear at App. 20-22.

that under Section 203(c) his annual reports need not include information with respect to these other labor relations activities. He has expressly disclaimed (see Pet. App. 22) any reliance on Section 204[4] which exempts communications protected by the attorney-client privilege. The Secretary, invoking Section 203(b) (A) and (B), has insisted that petitioner's annual reports include information with respect to these other labor relations activities.

Petitioner commenced this action in the United States District Court for the Middle District of North Carolina and obtained a declaratory judgment that Section 203(c) exempted him from including a statement of receipts and disbursements in connection with such other activities in his annual reports. The Court of Appeals for the Fourth Circuit reversed. It held that where activities requiring a 30-day report had been undertaken an annual report must be filed covering all labor relations activities including activities exempted from the 30-day reporting requirement by Section 203(c).

ARGUMENT

The decision of the court of appeals in this case is clearly correct and there is no conflict between the circuits.[5] Further review by this Court is, there-

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[4] Reliance on Section 204 would be unwarranted, in any event, because the annual reports clearly do not require any information as to communications between client and consultant.

[5] Two other cases now on appeal to the Court of Appeals for the Fifth Circuit raise the question presented by the peti-

fore, not warranted.

1. The statutory language is clear. Section 203 (b), *supra*, pp. 2-3, requires that when a person, pursuant to an agreement or arrangement with an employer, undertakes activities of which an object is

> to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing

or to supply the employer with certain information as to activities in connection with a labor dispute, he must file a 30-day report. This report must set out the terms and conditions of the agreement or arrangement.*

Section 203(b) goes on to require an annual report in each fiscal year during which payments were made as a result of such agreement or arrangement. This report, to be filed by any person who entered into such an arrangement or agreement, must contain

> * * * a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources there-

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tion. In one, *Price* v. *Wirtz*, No. 22630, the question was resolved in favor of the Secretary by the district court. In the other, *Wirtz* v. *Fowler*, No. 22350, the question was not reached by the district court, which decided that no reports at all were required.

* Petitioner has stipulated that he entered into three such agreements or arrangements and performed such activities. His 30-day reports appear at App. 20-22.

> of, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

Thus, once a person has undertaken an activity which triggers the duty to report, the statute plainly calls for an annual report as to receipts and disbursement from *all* employers, arising from labor relations advice and services.[7]

Petitioner's reliance upon Section 203(c) is misplaced. That Section simply specifies that:

> Nothing in this section shall be construed to require any * * * person to file a report covering the services of such person by reason of his giving or agreeing to give advice to [an] employer or representing or agreeing to represent [an] employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of [an] employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

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[7] It should be noted that the annual reports are not oppressive. Form LM-21, on which these reports are to be made, together with instructions, appears at App. 23-25. The information there required does not appear to be any more extensive than most prudent persons would maintain for income tax purposes. Petitioner's objection, then, must simply be to revealing the names of his clients for whom he performed labor services during the year, together with his fees for such services.

As petitioner notes (Pet. 12), the categories of persuasive and informational activity which trigger the 30-day report requirement are susceptible of very broad interpretation. The sole function of Section 203(c) is to protect against an unduly broad reading. Thus, Section 203(b), standing by itself, might be thought to require reports of a lawyer who confined himself to giving advice to a client in the privacy of his office, or who confined himself to representing a client in court or before the NLRB. Section 203(c) merely makes clear that these activities do not trigger the reporting requirements;[8] that is, it provides that Section 203(b)[9] shall not be construed to require anyone "to file a report covering the services of such person *by reason of* his giving or agreeing to give advice"[10] to an employer, etc. Petitioner's construction would require us to read the section as though it had deleted the words "covering the services of such person by reason of" and inserted the word "on."[11]

Petitioner does not deny that once the necessity

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[8] Thus, it would appear that the recurring example in petitioner's argument (*e.g.*, Pet. 7, 14) of the giving of advice by a lawyer to a client as to the future activities to be expected of a union, insofar as it consisted of advice from the lawyer's past knowledge, would probably not trigger the reporting requirements.

[9] And Section 203(a) as to employers.

[10] Emphasis added. See, in general, Beaird, *Reporting Requirements For Employers and Labor Relations Consultants*, 53 Geo. L. J. 267.

[11] See Pet. 10, where the word "on" is in fact inserted.

of filing a 30-day report has arisen by reason of activities not exempted under Section 203(c), the requirement of an annual report follows inexorably. He contends, however, that Section 203(c) limits the contents of the annual report. But Section 203(c) is plainly addressed to the occasion for filing a report and not to the contents of the report once the occasion has arisen. It says that a person shall not be required to file a report by reason of his giving advice; it says nothing about what shall be included in or excluded from a report which is unquestionably required. Reading Section 203(c) as though it bore on the contents of the annual report, would introduce a meaningless contradiction, as the court of appeals pointed out (Pet. App. 36): Section 203(c) would then exclude reporting on "advice" while Section 203(b)(A) expressly requires a statement of receipts "on account of labor relations advice * * *."

The legislative history of the Act supports the Secretary's reading of the Section.[12] For example, as

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[12] Petitioner's statement (Pet. 10-11) that Section 203(c) was the result of the concern expressed by the American Bar Association is factually incorrect. As pointed out below, the provisions of Section 203(c) appear as Section 103(b) of the Kennedy-Ives bill, S.3974, in 1958, and as Section 103(c) of the Kennedy-Ervin bill, S. 505, in 1959. These provisions appeared unchanged as reported out by the Senate committee as Section 103(c) of S.1555. The bill passed by the House, H.R. 8342, 105 Cong. Rec. 15891-15892, however, did take the view of the ABA into account, and clearly would have had the result here contended for by petitioner. Sections 203(b), 204 of H.R. 8342. But this approach was rejected in conference, where the Senate version of these sections was adopted.

noted by the court of appeals (Pet. App. 37-38), the Senate committee reports on these sections and their immediate predecessors of the prior year, which were in substance the same, pointed out that only an attorney or consultant who confines himself to Section 203(c) activities is exempted from the comprehensive reporting scheme. S. Rep. No. 1684, 85th Cong., 2d Sess. 8-9; S. Rep. No. 187, 86th Cong., 1st Sess. 12.[13]

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[13] Senate Report No. 1684 states (pp. 8-9):

> * * * Since attorneys at law and other responsible labor-relations advisors do not themselves engage in influencing or affecting employees in the exercise of their rights under the National Labor Relations Act, an attorney or other consultant *who confined himself* to giving advice, taking part in collectively bargaining and appearing in court and administrative proceedings nor [sic] would such a consultant be required to report. Although this would be the meaning of the language of sections 103(a) and (b) in any event, a proviso to section 103(b) guards against misconstruction. [Emphasis added.]

Congressman Kearns, in attacking these sections as a "shotgun approach," had noted that "[i]f a consultant should engage in an improper activity for one employer, he would then have to report services rendered for all other employers, regardless of how proper they were * * *" 104 Cong. Rec. 17139. See also testimony to the same effect before the Senate subcommittee. *Hearings before the Subcommittee on Labor of the Committee on Labor and Public Welfare of the United States Senate*, 86th Cong., 1st Sess., *Labor-Management Reform Legislation*, 228 (1959).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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